



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2017-0396; FRL-9981-96-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans;
Maryland; 2011 Base Year Inventory for the 2008 8-Hour Ozone National Ambient Air
Quality Standard for the Baltimore, Maryland Nonattainment Area**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision for the 2011 base year inventory for the Baltimore, Maryland moderate nonattainment area for the 2008 8-hour ozone national ambient air quality standard (NAAQS). The State of Maryland submitted the emission inventory through the Maryland Department of the Environment (MDE) to meet the nonattainment requirements for moderate ozone nonattainment areas for the 2008 8-hour ozone NAAQS. EPA is approving the 2011 base year emissions inventory for the 2008 8-hour ozone NAAQS as a revision to the Maryland state implementation plan (SIP) in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2017-0396. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g.,

confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, (215) 814-2176, or by e-mail at rehn.brian@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On July 18, 1997, EPA promulgated a revised ozone NAAQS of 0.08 ppm, averaged over eight hours. 62 FR 38855. This 8-hour ozone NAAQS was determined to be more protective of public health than the previous 1979 1-hour ozone NAAQS. *See* 44 FR 8202 (February 8, 1979). In 2008, EPA revised the 8-hour ozone NAAQS from 0.08 to 0.075 ppm. *See* 73 FR 16436 (March 27, 2008).¹

On May 21, 2012, the Baltimore, Maryland area was designated as moderate nonattainment for the 2008 8-hour ozone NAAQS. 77 FR 30088. The designation of the Baltimore, Maryland area as moderate nonattainment was effective July 20, 2012. The Baltimore, Maryland nonattainment area is comprised of Anne Arundel County, Baltimore County, Baltimore City, Carroll County, Harford County, and Howard County. Under section 172(c)(3) of the CAA, Maryland is required to submit a comprehensive, accurate, and current inventory of actual emissions from all

¹ On October 1, 2015, EPA strengthened the 8-hour ozone NAAQS to 0.070 ppm. *See* 80 FR 65292 (October 16, 2015). This rulemaking addresses the 2008 8-hour ozone NAAQS and does not address the 2015 8-hour ozone NAAQS.

sources of the relevant pollutants in its moderate nonattainment area.

On October 3, 2017 (82 FR 46010 and 82 FR 45997), EPA simultaneously published a notice of proposed rulemaking (NPR) and a direct final rule (DFR) for the State of Maryland approving the SIP revision. EPA received adverse comments on the rulemaking and withdrew the DFR prior to the effective date of December 4, 2017. In this final rulemaking, EPA is responding to the comments submitted on the proposed revision to the Maryland SIP and is approving Maryland's 2011 base year emissions inventory for the 2008 8-hour ozone NAAQS.

II. Summary of SIP Revision and EPA Analysis

Under CAA section 172(c)(3), states are required to submit a comprehensive, accurate, and current account of actual emissions from all sources (point, nonpoint, nonroad, and onroad) in the nonattainment area. CAA section 182(a)(1) and (b) requires that areas designated as nonattainment and classified as moderate submit an inventory of all sources of ozone precursors no later than 2 years after the effective date of designation.

On December 30, 2016, MDE submitted a formal revision (SIP #16-16) to its SIP. The SIP revision consists of the 2011 base year inventory for the Baltimore, Maryland nonattainment area for the 2008 8-hour ozone NAAQS. In accordance with EPA's requirements for ozone SIP planning, "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements," MDE selected 2011 for its base year emissions inventory. *See* 80 FR 12263 (March 6, 2015). MDE's 2011 base year inventory includes emissions estimates covering the general source categories of stationary point, area (nonpoint), quasi-point, nonroad mobile, onroad mobile, and Marine-Air-Rail (M-A-R).

EPA reviewed Maryland's 2011 base year emission inventory's results, procedures, and methodologies for the Baltimore, Maryland moderate nonattainment area and found them to meet the applicable requirements for approval under sections 110, 172(c)(3) and 182(a)(1) and (b) of the CAA.

Other specific requirements of Maryland's 2011 base year emissions inventory for the 2008 8-hour ozone NAAQS and the rationale for EPA's proposed action are explained in the prior direct final rule (DFR) and its accompanying NPR and will not be restated here. EPA received public comments on the NPR that will be addressed in section III of this rulemaking.

III. Response to Comments

During the comment period, EPA received several anonymous comments on this rulemaking. EPA is responding to the comments submitted specific to this action on the proposed revision to the Maryland SIP. All other comments received were not specific to this action and thus are not addressed here.

Comment 1: The Commenter claims Maryland assumed Stage II controls were in effect even though the State has "exercised enforcement discretion for new and existing sources effectively eliminating all reductions from any [Stage II] controls." Commenter provides a memorandum from MDE's Air & Radiation Management Administration (ARMA) titled "Stage II Vapor Recovery Systems – Enforcement Discretion Policy (March 20, 2014)."

Response 1: EPA notes that Maryland's 2011 base year emissions inventory analysis for the 2008 ozone NAAQS was performed for calendar year 2011 using 2011 emissions data. Maryland continued to implement and enforce the Stage II program prior to issuance of MDE's

enforcement policy on March 6, 2014, suspending state enforcement of the program from that time forward. Maryland intended to subsequently repeal the Stage II rule and to submit to EPA a SIP revision to remove the program from the SIP. Maryland submitted a SIP revision to EPA to remove the Stage II program from the SIP on August 28, 2017. However, the Stage II program was in operation and was being enforced in 2011. Therefore, EPA believes Maryland correctly estimated its 2011 emission inventory to include the Stage II program as an implemented, enforceable emission control measure. Therefore, EPA finds Maryland correctly estimated its emissions inventory to reflect Stage II as a control measure in place in the 2011 base year inventory period.

Comment 2: Commenter claims that the emissions calculations for “Open Burning – Land Clearing” uses an ozone season of only 92 days, which is not even half of the full ozone season.

Response 2: Maryland chose to use the peak ozone period of June to August (92 days) for the “Open Burning – Land Clearing” emissions calculations as their ozone season.² Under EPA’s “Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations (July 2017),” the state shall “select the representative months and work week days to include in the calculation of the ozone season day emissions. The temporal basis for these emissions should be representative of the conditions leading to nonattainment, as recommended by the state.”³ EPA finds that Maryland’s calculations in the 2016 SIP submittal comply with the current guidance in choosing to select June to August as the ozone season for the “Open Burning – Land Clearing” emissions calculations, as Maryland states these months are typically peak ozone season.

² See EPA-R03-OAR-2017-0396-0005, page 109.

³ See https://www.epa.gov/sites/production/files/2017-07/documents/ei_guidance_may_2017_final_rev.pdf, page 72.

Comment 3: Maryland assumed that “commercial and industrial sources only operated 6 days a week instead of 7.” Commenter notes that “nothing in Maryland prevents businesses from operating 7 days a week and so Maryland should have used 7 days a week.”

Response 3: While Commenter is not specific as to which commercial and industrial sources are of concern, EPA’s Emission Inventory Improvement Program (EIIP) guidance (May 2001) provides flexibility in the operation days. For example, the guidance for solvent cleaning operations states, “Daily variations may apply for some of the industries. Some industries operate seven days per week, others only five days. Some industries are likely to operate two or three shifts per day, others may only have one.” Therefore, “the default value of uniform activity through the year is six days per week.”⁴ EPA finds that Maryland performed the calculations in accordance with the EIIP guidance.⁵

Comment 4: Commenter claims Maryland’s inspection and maintenance (I/M) program is improperly represented in the emission modeling parameters selected by Maryland in the Motor Vehicle Emission Simulator (MOVES) modeling used to estimate the highway mobile source emissions portion of the emission inventory, which are used to calculate emissions benefits from the I/M program. The commenter claims MOVES parameters for I/M program coverage incorrectly included an I/M program motorist compliance rate of over 96% when the state is known to “have a large number of (vehicle) failures that never return to get rechecked.”

Additionally, the commenter states that “Maryland allows for almost 6 months of extensions after first testing and finding a problem that has to be fixed. This means that if a car is failing in

⁴ See <https://www.epa.gov/sites/production/files/2015-08/documents/iii06fin.pdf>, page 6.3-9.

⁵ See <https://www.epa.gov/air-emissions-inventories/air-emissions-inventory-improvement-program-eiip> for all EIIP technical reports.

the second half of the year it is possible to have a violating vehicle for the rest of the year meaning compliance is not achieved.” Commenter would like EPA to require Maryland to use actual I/M data collected by the Maryland program to be used to set the I/M program parameters of the MOVES model instead of MOVES default parameters as this would reduce the reductions attributed to the I/M program and change the area’s overall emissions inventory.

Response 4: The I/M program motorist compliance rate is represented by the number of complying vehicles (i.e., vehicles with a confirmed final I/M test outcome, either passing the test or receiving a waiver from doing so) divided by the number of vehicles subject to testing in the area x 100. Maryland collects statistics for its Vehicle Emissions Inspection Program (VEIP) on an ongoing basis, and per a requirement of the federal requirements for I/M programs, annually reports program summary data to EPA for the prior calendar year. For purposes of the 2011 base year inventory, the relevant I/M annual report from Maryland to EPA was submitted on August 15, 2012, representing calendar year 2011.⁶ For 2011, MDE reported that a total of 1,562,895 vehicles were tested under the VEIP program. Of these, 1,424,557 vehicles initially passed and 138,338 vehicles failed the VEIP test. Of the initial failures, 14,442 ultimately received a test “waiver” outcome after spending money for repairs up to a limit established by the VEIP program (but still not passing a test). Therefore, a total of 1,438,99 out of 1,562,895 vehicles received some form of final VEIP test outcome (either a passing test or a waiver) by the end of calendar year 2011, for a 92% compliance rate. However, Maryland calculated an overall 97% I/M program motorist compliance rate for the 2011 calendar year, when taking into account vehicles that received legally granted compliance extensions, but received a final outcome by the

⁶ See Maryland’s I/M annual report for calendar year 2011, dated July 2012, as submitted to EPA from MDE via letter to Brian Rehn from Marcia Ways, dated July 15, 2012.

following July.⁷ Maryland's 2011 I/M report tracks outcomes for these delayed compliance vehicles from the end of 2011 through July 2012 and factors them into an adjusted compliance rate for calendar year 2011. In doing so, MDE has attempted to account for many of the initially failing vehicles in the 2011 calendar year that did not receive a final I/M test outcome by the end of 2011. Taking into account these late complying vehicles, as well as vehicles that were identified as having been scrapped or relocated outside the I/M program area, MDE's calculated motorist compliance rate reached 96%, very near to the compliance rate assumed by MDE in the MOVES modeling performed to support the 2011 base year emission inventory.⁸ EPA finds that the MDE made a reasonable estimate of I/M program motorist compliance rate for its base year inventory. Based on our review of state-reported 2011 I/M program data, EPA disagrees with the Commenter that the I/M program motorist compliance rate assumed by MDE for the base year inventory was not achieved in practice. *See* 40 CFR part 51.351(12).

Comment 5: Commenter requests that EPA fully evaluate all calculations to ensure Maryland has used the proper methodologies and assumptions.

Response 5: EPA has reviewed the stationary point source, area source, highway mobile, and nonroad mobile source sector emissions estimates for the 2011 base year inventory and is satisfied that MDE has followed the appropriate guidelines and used the latest available information to support its base year inventory estimates. EPA has reviewed the 2011 base year inventory for the Baltimore, Maryland moderate nonattainment area for the 2008 8-hour ozone NAAQS and finds that Maryland has followed the guidance for a base year inventory submission.

⁷ *See* Maryland's July 2012 IM Annual Report to EPA, dated July 2012, pages 4-17 for further details on MD's motorist compliance rate, based on actual 2011 I/M program data.

⁸ *See* EPA-R03-OAR-2017-0396-0005, page 261.

IV. Final Action

EPA is approving the Maryland SIP revision which includes the 2011 base year inventory for the 2008 8-hour ozone NAAQS for the Baltimore, Maryland moderate nonattainment area because the inventory was prepared in accordance with requirements in sections 110, 172(c)(3) and 182(a)(1) and (b) of the CAA and its implementing regulations including 40 CFR 51.915.

After receipt of adverse public comment on our prior direct final rule, EPA published an action to withdraw the direct final rule (82 FR 66611, November 22, 2017). This withdrawal occurred prior to the effective date for the direct final action, preventing 40 CFR 52.1075(r) from being added to the SIP through the direct final action. With this final rule, EPA is now adding 40 CFR 52.1075(r) to Maryland's SIP.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because

SIP approvals are exempted under Executive Order 12866.

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country

located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving Maryland’s 2011 base year inventory for the 2008 8-hour ozone NAAQS for the Baltimore, Maryland moderate nonattainment area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 26, 2018.

Cecil Rodrigues,
Acting Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart V—Maryland

2. In § 52.1070, the table in paragraph (e) is amended by adding an entry for “2011 Base Year Emissions Inventory for the 2008 8-Hour Ozone National Ambient Air Quality Standard” at the end of the table to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(e)* * *

EPA approved non-regulatory and quasi-regulatory material

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * *	* * *	* * *	* * *	
2011 Base Year Emissions Inventory for the 2008 8-Hour Ozone National Ambient Air Quality Standard	Baltimore, Maryland 2008 Ozone Moderate Nonattainment Area	12/30/2016	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	See §52.1075(r)

3. Section 52.1075 is amended by adding paragraph (r) to read as follows:

§ 52.1075 Base year emissions inventory.

* * * * *

(r) EPA approves as a revision to the Maryland state implementation plan the 2011 base year emissions inventory for the Baltimore, Maryland moderate nonattainment area for the 2008 8-hour ozone national ambient air quality standards submitted by the Maryland Department of the Environment on December 30, 2016. The 2011 base year emissions inventory includes emissions estimates that cover the general source categories of stationary point, quasi-point, area (nonpoint), nonroad mobile, onroad mobile, and Marine-Air-Rail (M-A-R). The inventory includes actual annual emissions and typical summer day emissions for the months of May through September for the ozone precursors, VOC and NO_x.

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